

People v House

2016 NY Slip Op 33236(U)

October 19, 2016

County Court, Westchester County

Docket Number: Indictment No. 15-0759

Judge: Anne E. Minihan

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COUNTY COURT: STATE OF NEW YORK
COUNTY OF WESTCHESTER

FILED
AND ENTERED
ON 10-19 2016
WESTCHESTER

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THE PEOPLE OF THE STATE OF NEW YORK **FILED** *Te*

-against-

OCT 19 2016

DECISION & ORDER

CECIL HOUSE,

TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER
Defendant.

Indictment No.: 15-0759

-----X
MINIHAN, J.

Defendant CECIL HOUSE, having been indicted on or about July 7, 2016, for two counts of Criminal Possession of a Controlled Substance in the Third Degree (Penal Law § 220.16[1]) (two counts); Criminal Possession of a Controlled Substance in the Fourth Degree (Penal Law § 220.09[1]) (two counts); Tampering with Physical Evidence (Penal Law § 215.40 [2]); Criminal Possession of a Controlled Substance in the Seventh Degree (Penal Law § 220.03) (two counts); Driving While Intoxicated (Vehicle and Traffic Law § 1192 [2]); Driving While Intoxicated (Vehicle and Traffic Law § 1192 [3]); Driving on Roadways Laned for Traffic (Vehicle and Traffic Law § 1128[a]); Driving While Using a Mobile Phone (Vehicle and Traffic Law § 1225-c [2][a]); and Illegal Signal (Vehicle and Traffic Law § 1163 [d]) has filed an omnibus motion consisting of a Notice of Motion and an Affirmation in Support thereof. In response thereto, the People have filed an Affirmation in Opposition together with a Memorandum of Law.

Upon consideration of these papers, the stenographic transcript of the grand jury minutes and the Consent Discovery Order entered in this case, this Court disposes of this motion as follows:

I.

MOTION to INSPECT, DISMISS and/or REDUCE

The Court grants the Defendant's motion to the limited extent of the court having conducted an *in camera* inspection of the stenographic transcription of the grand jury proceedings. Notably, the People consent to the Court's review of the grand jury minutes. Upon such review, the Court finds no basis upon which to grant Defendant's application to dismiss or reduce the indictment.

Specifically, Defendant's application to dismiss counts two and four of the indictment arguing that since there was no exchange of drugs on September 4, 2015 then there could be no sale is denied.

The Grand Jury was properly instructed (*see People v Calbud*, 49 NY2d 389, [1980]; *People v Valles*, 62 NY2d 36 [1984]; *People v Burch*, 108 AD3d 679 [2d Dept 2013]). The evidence presented, if accepted as true, is legally sufficient to establish every element of each offense charged (CPL 210.30[2]). Additionally, the minutes reveal a quorum of the grand jurors was present during the presentation of evidence, that the Assistant District Attorney properly instructed the Grand Jury on the law, and only permitted those grand jurors who heard all the evidence to vote the matter.

Based upon the *in camera* review, since this Court does not find release of the Grand Jury minutes or any portion thereof necessary to assist it in making any determinations and as the Defendant has not set forth a compelling or particularized need for the production of the grand jury minutes, Defendant's application for a copy of the Grand Jury minutes is denied (*People v Jang*, 17 AD3d 693 [2d Dept 2005]; CPL 190.25[4][a]).

II.

MOTION for DISCOVERY, DISCLOSURE and INSPECTION
CPL ARTICLE 240

The parties have entered into a stipulation by way of a Consent Discovery Order consenting to the enumerated discovery in this case. Defendant's motion for discovery is granted to the extent provided for in Criminal Procedure Law Article 240. If there any further items discoverable pursuant to Criminal Procedure Law Article 240 which have not been provided to defendant pursuant to the Consent Discovery Order, they are to be provided forthwith.

As to the defendant's demand for exculpatory material, the People have acknowledged their continuing duty to disclose exculpatory material at the earliest possible date upon its discovery (*see Brady v Maryland*, 373 US 83 [1963]; *Giglio v United States*, 405 US 150 [1972]). The People have also acknowledged their duty to comply with *People v Rosario*, (9 NY2d 286 [1961]). In the event that the People are or become aware of any material which is arguably exculpatory and they are not willing to consent to its disclosure to the defendant, they are directed to immediately disclose such material to the Court to permit an *in camera* inspection and determination as to whether such must be disclosed to the defendant.

Defendant's motion for a further Bill of Particulars is denied. The Bill of Particulars set forth in the Consent Discovery Order provided to the defendant has adequately informed the defendant of the substance of her alleged conduct and in all respects complies with CPL 200.95.

Except to the extent that the defendant's application has been specifically granted herein, it is otherwise denied as seeking material or information beyond the scope of discovery (*see People v Colavito*, 87 NY2d 423 [1996]; *Matter of Brown v Grosso*, 285 AD2d 642 [2d Dept 2001]; *Matter of Brown v Appelman*, 241 AD2d 279 [2d Dept 1998]; *Matter of Catterson v Jones*, 229 AD2d 435 [2d Dept 1996]; *Matter of Catterson v Rohl*, 202 AD2d 420 [2d Dept 1994]).

III.

MOTION to SUPPRESS NOTICED STATEMENTS

This branch of the defendant's motion seeking to suppress statements on the grounds that they were unconstitutionally obtained is granted to the extent that a *Huntley* hearing shall be held prior to trial to determine whether any statements allegedly made by the defendant, which have been noticed by the People pursuant to CPL 710.30 (1)(a), were involuntarily made by the defendant within the meaning of CPL 60.45 (see CPL 710.20(3); CPL 710.60[3][b]; *People v Weaver*, 49 NY2d 1012 [1980]), obtained in violation of defendant's Sixth Amendment right to counsel, and/or obtained in violation of the defendant's Fourth Amendment rights (see *Dunaway v New York*, 442 US 200 [1979]).

IV.

MOTION for a MAPP/DUNAWAY/INGLE HEARING

Defendant's motion to suppress evidence on the ground that there was no probable cause for his arrest is denied as the defendant has failed to provide sworn allegations of fact to support the allegation that the arrest was unlawful (CPL 710.60 [3][b]; *People v Mendoza*, 82 NY2d 415, 428 [1993]; *People v France*, 12 NY3d 790 [2009]). Defendant's conclusory allegations of a general constitutional violation and/or lack of probable cause for the arrest fail to meet the statutory requirements for entitlement to a hearing (*People v Jones*, 95 NY2d 721 [2001]).

Defendant's application to suppress evidence (narcotics) that law enforcement recovered on or about April 13, 2015 after the defendant tried to flush narcotics down the toilet and after he threw a bag containing narcotics in the garbage is denied. Since the defendant abandoned the narcotics recovered by the troopers, he has no standing to contest the recovered items since there was no seizure by police (*People v Burkett*, 98 AD3d 746 [2d Dept 2012]). The defendant has not set forth any facts showing a legitimate expectation of privacy in the area searched. Consequently, the defendant lacks standing to move to suppress these items (see *Rakas v Illinois*, 439 US 128 [1978]; *People v Ponder*, 54 NY2d 160 [1981]; and *People v Banker*, 187 AD2d 602 [2d Dept 1992]).

For the foregoing reasons, the defendant's application for a hearing concerning the suppression of physical evidence is denied.

V.

MOTION for SANDOVAL and VENTIMIGLIA HEARINGS

Defendant has moved for a pre-trial hearing to permit the trial court to determine the extent, if at all, to which the People may inquire into the defendant's prior criminal convictions, prior uncharged criminal, vicious or immoral conduct. The People have consented to a *Sandoval* hearing. Accordingly, it is ordered that immediately prior to trial a hearing shall be conducted pursuant to *People v Sandoval* (34 NY2d 371[1974]). At said hearing, the People shall be required to notify the defendant of all specific instances of his criminal, prior uncharged criminal,

vicious or immoral conduct of which they have knowledge and which they intend to use in an attempt to impeach the defendant's credibility if he elects to testify at trial (CPL 240.43).

At the hearing, the defendant shall bear the burden of identifying any instances of his prior misconduct that he submits the People should not be permitted to use to impeach his credibility. The defendant shall be required to identify the basis of his belief that each event or incident may be unduly prejudicial to his ability to testify as a witness on his own behalf (*see People v Matthews*, 68 NY2d 118 [1986]; *People v Malphurs*, 111 AD2d 266 [2d Dept 1985]).

Defendant's application for a hearing, pursuant to *People v Ventimiglia* (52 NY2d 350 [1981]) is denied since the People have not indicated an intention to use evidence of any prior bad act or uncharged crimes of the defendant during its case in chief (*see People v Molineaux*, 168 NY2d 264 [1901]). If the People move to introduce such evidence, the defendant may renew this aspect of his motion.

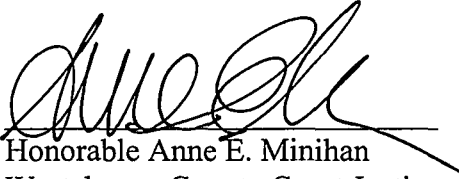
VI.

MOTION for TIME to FILE FUTURE MOTIONS

This motion is denied. Any future motion must be brought by way of order to show cause setting forth reasons as to why said motion was not brought in conformity with CPL 255.20.

The foregoing constitutes the opinion, decision and order of this Court.

Dated: White Plains, New York
October 19, 2016


Honorable Anne E. Minihan
Westchester County Court Justice

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